United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-5006 **September Term, 1995**

92cv2860

Securities and Exchange Commission,
Appellee

v.

Benjamin G. Sprecher,
Appellant

United States Court of Appeals
For the District of Columbia Circuit
FILED APR 09 1996/STAMP

Appeal from the United States District Court
For the District of Columbia

Before: WALD, SILBERMAN, AND SENTELLE, *Circuit Judges*

JUDGMENT

This cause was considered on the record on appeal from the United States District Court for the District of Columbia, and was briefed by counsel. While the issues presented occasion no need for a published opinion, they have been accorded full

consideration by the Court. *See* D.C. Cir. R. 36(b) (January 1, 1994). On consideration thereof, it is

ORDERED and **ADJUDGED**, by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed for the reasons set forth in the accompanying memorandum. It is

FURTHER ORDERED, by this Court, *sua sponte*, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. R. 41(a)(1) (January 1, 1994). This instruction to the Clerk is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

Per Curiam
For the Court:

Mark Langer/Signature
Mark Langer, Clerk

MEMORANDUM

Appellant Benjamin Sprecher challenges the district court's summary judgment for the Securities and Exchange Commission determining that Sprecher violated Rule 10b-5 and § 5, granting disgorgement of $55,870, and enjoining him from committing future securities violations and from serving as an officer or director of any public company. We affirm.

Sprecher was the attorney for and had a controlling role in World Wide Medical Technology, a shell corporation with no assets or liabilities. Jacob Roth, a business associate of Sprecher, owned the majority of World Wide shares and was one of the three directors. Sprecher and two other business associates, Louis Foti and Jay Hastings, devised a plan to acquire the World Wide stock from Roth for $20,000, merge World Wide with another company, and then sell the stock for a profit. The three associates wanted to be able to sell the stock freely, however, without the required disclosures for registered stock. The shares held by Roth were restricted because he had acquired the shares from World Wide in a non-public transaction. If the three associates acquired the stock from Roth, they would be "underwriters" under § 2(11), which defines "underwriter" as someone who purchases a security from an issuer or a person who controls the issuer with a view to reselling. 15 U.S.C. § 77(b)(11) (1994). And under § 4(1), underwriters are *not* exempt from § 5 registration requirements. 15 U.S.C. § 77(d)(1). Thus, in order to free the stock from registration requirements, Sprecher looked to Rule 144(k), which creates an exception from the definition of "underwriter" for securities acquired from an affiliate of the user--someone who directly or indirectly controls the issuer--if the affiliate has held the securities more than three years *and*, at the time of the sale, has not been an affiliate for at least three months.

17 C.F.R. 230.144 (1995). Roth clearly met the first criterion--he had held the shares more than three years. But as the controlling shareholder and the only active director, he was still an affiliate of World Wide.

In order to make it appear that Roth met this second criterion--and therefore that the shares met the 144(k) exemption--Sprecher and his two associates, on March 30, 1988, drafted and backdated minutes for a fictitious December 27, 1987 board meeting. In the false minutes, Roth was voted out of control and replaced by new directors, making it appear that as of March 30, 1988, Roth had not been an affiliate for over three months. These false minutes were mailed to the SEC, with an explanation for their late arrival, and also to World Wide's transfer agent with instructions for him to remove the legend restricting the shares pursuant to 144(k). The agent complied, and the newly unrestricted shares were transferred to Sprecher, Foti, and Hastings. Sprecher continued actively to develop the merger plans over the next few months, yet he filed a standard quarterly report (Form 10-Q) on May 31, 1988 with the SEC stating that World Wide had "no prospects" of a merger. The merger took place, and between July and December, 1988, Sprecher sold unrestricted, unregistered shares of World Wide to the public, making a profit of $55,870.

Sprecher was convicted in the Southern District of New York for perjury, obstruction of justice, making false statements, and conspiring to sell unregistered securities unlawfully. *United States v. Sprecher*, 783 F.Supp. 133 (S.D.N.Y. 1992). The trial court determined the securities were not exempt from registration because Roth was an affiliate of World Wide at least through March 31, 1988, so the transfer of shares to Sprecher, also an affiliate of the company, did not free them from registration requirements under Rule 144. 783 F.Supp. at 158-59. The court

also found that Sprecher made false statements by filing with the SEC false corporate minutes and false declarations that no merger was contemplated. *Id.* at 161. It imposed a fine of $50,000 based on the costs of incarceration. *See* SEC App. 317 (sentencing hearing transcript). On appeal, the Second Circuit affirmed, but remanded for resentencing. *United States v. Sprecher*, 988 F.2d 318 (2d Cir. 1993).

The SEC subsequently brought this civil action in the District of Columbia District Court charging violations of Rule 10b-5 and § 5 and seeking injunctive relief and disgorgement. The district court determined that Sprecher was collaterally estopped from challenging the Rule 10b-5 and § 5 claims because substantially the same violations and underlying facts formed the basis for his criminal conviction, and that his affirmative defenses were without merit. Sprecher's counterclaim for damages and injunctive relief, based on an alleged pattern of SEC misconduct, was barred by § 21(g), which prohibits consolidating or coordinating any other action with any action by the Commission for equitable relief without SEC consent, even if the claims "involve common questions of fact." 15 U.S.C. § 78u(g) (1994). The court ordered disgorgement of the $55,870 profit, concluding disgorgement was not precluded by the criminal court's $50,000 fine, and enjoined Sprecher from violating the securities laws in the future and from serving as an officer or director of any public company pursuant to the Remedies Act of 1990, 15 U.S.C. §§ 78u(d)-(e) (1994).

Sprecher repeats on appeal his contention that he was not collaterally estopped from litigating whether he violated Rule 10b-5 and § 5. Rule 10b-5 makes unlawful "any untrue statement of a material fact" or any omission of a material fact "in connection with the purchase or sale of any security." 17 C.F.R. 240.10b-5 (1995). The New York court found that Sprecher

intentionally made false statements in connection with the purchase or sale of a security, but it did not determine that the statements were material, because materiality was not an element of the criminal offense charged. The district court here nevertheless applied collateral estoppel, without explicitly addressing materiality. We agree with the SEC, however, that the statements were material *as a matter of law*. The statements involved who had control over the company--and therefore whether the shares were lawfully exempt from registration--and merger negotiations. We think it beyond question that these statements would be substantially likely to be considered significant information by any reasonable investor. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448 (1976).

Sprecher similarly challenges the claim under § 5, which makes it unlawful to sell unregistered securities unless the securities qualify for an exemption. 15 U.S.C. § 77(e) (1994). He claims that the New York court did not decide whether the stock was exempt from registration, and that even if the stock were not eligible for the Rule 144(k) exemption, it was otherwise exempt under § 4(1). Despite Sprecher's attempts to distort the record, the New York court explicitly determined that the shares were not legitimately exempt from registration under Rule 144(k). 783 F.Supp. at 159. And although it did not address § 4(1) directly, the court stated that *no other exemption* was available, and in any event its determination that Sprecher and Roth were both Wold Wide affiliates (controlling persons) necessarily bars any exemption under § 4(1). Sprecher both bought the shares from a controlling shareholder with a view to distribution, and was a controlling person himself in the corporation; either of these suffices to make him an underwriter under § 4(1), and therefore not exempt from § 5 registration requirements. *See* § 2(11); *United States v. Sherwood*, 175 F.Supp. 480, 482-83 (S.D.N.Y. 1959).

Sprecher's affirmative defense of equitable estoppel and his counterclaim for damages and for injunctive relief, which are both based on the same allegations of a pattern of Commission misconduct, are similarly barred. These allegations were litigated fully in Sprecher's motion to suppress and his post-conviction motions in the criminal trial. We therefore do not have to reach the issue of whether § 21(g) bars the counterclaim. But we think the district court likely correct. The rationale of the rule is to allow quick resolution of SEC actions, and even if based on the same facts--which the statute expressly says is not controlling--counterclaims might raise additional issues, such as immunity or the appropriate relief. Sprecher claims § 21(g) is only a venue provision that cannot bar counterclaims, which are really part of the same suit. But § 21(g)'s language is broader than Sprecher suggests. *See, e.g., SEC v. Electronics Warehouse, Inc.*, 689 F.Supp. 53, 72 (D.Conn. 1988), *aff'd*, 891 F.2d 457 (2d Cir. 1989), *cert. denied*, 496 U.S. 942 (1990).

Finally, Sprecher's contentions that the court is precluded from imposing either disgorgement or an officer and director bar are meritless. Disgorgement is an equitable remedy, not a punishment like a fine. *SEC v. Bilzerian*, 29 F.3d 689, 696 (D.C. Cir. 1994). The New York court expressly imposed the $50,000 fine to account for prison costs, and not as restitution or disgorgement. The D.C. district court therefore validly could order disgorgement. And its injunction barring Sprecher from serving as an officer or director also is valid as an exercise of its general equitable powers, since the conduct prohibited is similar in nature to the violations for which Sprecher was convicted. *See Franklin v. Gwinnett County Public Schools*, 112 S.Ct. 1028, 1034-35 (1992); *NLRB v. Express Publishing Co.*, 312 U.S. 426, 435-36 (1941); *Bilzerian*, 29 F.3d at 695. It appears that Sprecher concedes the court could impose an officer and director bar under its general equitable powers in an appropriate case, but argues

that an injunction here is inappropriate because he was not an officer or director. Sprecher's apparent concession is correct--a court may impose such a bar where appropriate. *See SEC v. Posner*, 16 F.3d 520, 521-22 (2d Cir. 1994), *cert. denied*, 115 S.Ct. 724 (1995). And whether the person enjoined has held that precise position cannot be dispositive; the critical issue is whether the injunction restrains acts "of the same type or class" or that "may fairly be anticipated from the defendant's conduct in the past." *Express Publishing*, 312 U.S. at 435. The district court appropriately exercised its discretion here since Sprecher had a controlling, fiduciary role in World Wide equivalent to an officer or director's role and his security laws violations were flagrant and deliberate, making it likely that he would commit similar future violations if holding an officer or director position. Although the court imposed the bar pursuant to the Remedies Act of 1990, we can affirm on other grounds. We therefore do not reach the issue of the retroactive application of the Remedies Act of 1990.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-5006 **September Term, 1995**
USDC CV 92-2860

Securities and Exchange Commission,
Appellee

v.

Benjamin G. Sprecher,
Appellant

United States Court of Appeals
For the District of Columbia Circuit
FILED
MAY 17 1996
CLERK/STAMP

BEFORE: Wald, Silberman, and Sentelle, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed April 24, 1996, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By: Robert A. Bonner/Signature
Robert A. Bonner
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
v.	)	Civil Action No. 92-2860-LFO
BENJAMIN G. SPRECHER,	)	
Defendant.	)	

FILED
DEC 16 1993
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA/STAMP

MEMORANDUM

Defendant Benjamin G. Sprecher was convicted of various counts relating to fraudulent sales of securities and is currently incarcerated. Plaintiff, the Securities and Exchange Commission (the "Commission"), now seeks an injunction to prevent Sprecher from committing future securities violations, to bar his future participation as an officer or director in any public corporation, and to require him to disgorge profits that he allegedly realized from his illegal acts. Sprecher has filed a counterclaim alleging misconduct on the part of the Commission. The parties have filed numerous motions. For the reasons set forth below, the accompanying Order grants plaintiff's motion for

summary judgment and the relief it seeks. The Order also dismisses defendant's counterclaim.

I.

After an extended bench trial in the Southern District of New York, and based on extensive findings of fact, Judge Miriam Cedarbaum found defendant guilty of, inter alia,

> conspiring to defraud the United States and making false statements to a government agency in connection with two separate securities transactions [and] perjury and obstruction of justice in connection with an SEC investigation . . . .

United States v. Sprecher, 783 F. Supp. 133, 137 (S.D.N.Y. 1992), conviction aff'd, 988 F.2d 318 (2d Cir., 1993). Defendant is currently serving a 37-month prison term.

Subsequent to defendant's criminal conviction, the Commission brought this suit to seek appropriate civil penalties against defendant. Several motions now are ripe. Initially, plaintiff moved to dismiss defendant's counterclaim and for summary judgment as to several of defendant's affirmative defenses. Defendant responded with a motion to dismiss or for summary judgment on the complaint and for summary judgment on his counterclaim. Defendant also has requested a discovery conference. Finally, plaintiff has moved for summary judgment.

II.

A party is entitled to summary judgment when the record establishes "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see Greenberg v. FDA, 803 F.2d

1213, 1215-16 (D.C. Cir. 1986). The undisputed facts in this record indicate that plaintiff's motion for summary judgment should be granted.

A.

Plaintiff alleges that defendant violated Sections 5 and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77e, 77q(a), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; in addition, plaintiff claims that defendant aided and abetted violations of Section 13(a) of the Securities Exchange Act, 15 U.S.C. § 78m(a), and several rules thereunder. Substantially, the same violations and underlying facts formed the basis for defendant's criminal conviction. Generally, a criminal conviction collaterally estops relitigation in a subsequent civil action of the factual issues essential to the disposition of the criminal case. See, e.g., Local 167, Int'l Brotherhood of Teamsters v. United States, 291 U.S. 293, 298 (1934).

Defendant's pleadings repeatedly assert without support that plaintiff engaged in misconduct in connection with defendant's criminal prosecution and that his conviction was in error. Defendant's criminal trial extended over thirteen days; seventeen witnesses testified. A United States District Judge found defendant guilty beyond a reasonable doubt, and the Court of Appeals affirmed. Defendant has offered no reason for revisiting those courts' determinations here.

B.

Defendant attempts to raise several affirmative defenses against this action. All of the defenses are unavailing; none defeats plaintiff's motion for summary judgment. For example, defendant charges prosecutorial misconduct in the course of the investigation that led to his criminal conviction. Such an unclean

hands defense does not lie in a civil enforcement action brought by a federal agency, as distinguished from a private plaintiff. See Pan American Petroleum & Transport Co. v. United States, 273 U.S. 456, 506 (1927); United States v. Second Nat'l Bank, 502 F.2d 535, 548 (5th Cir. 1974), cert. denied, 421 U.S. 912 (1975).

In addition, defendant invokes a state statute of limitations. State limitations statutes generally do not bar federal civil enforcement actions. See United States v. Summerlin, 310 U.S. 414, 416 (1940). Time limitations on private securities actions do not apply to this federal enforcement proceeding. Cf. Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S. Ct. 2773, 2776 (1991). Similarly, the government is not subject to the defense of laches when acting in a nonproprietary capacity. Summerlin, 310 U.S. at 416. Federal courts have applied this bar to laches in the securities context. See, e.g., SEC v. Gulf & Western Industries, 502 F. Supp. 343, 348 (D.D.C. 1980).

None of the other affirmative defenses that defendant asserts, including res judicata, collateral estoppel, and nonjoinder of necessary parties, bears on this action.

C.

Each of the remedies that plaintiff seeks provides appropriate relief in light of defendant's several proven violations of the securities laws. Sections 21(d) and (e) of the Exchange Act, 15 U.S.C. §§ 78u(d) and (e), authorize injunctive relief against persons engaged in violations of the Exchange Act or rules thereunder. Once a violation of law is established, future violations can be enjoined if the defendant's past conduct indicates a reasonable likelihood of further, future violations. SEC v. First City Financial Corp., 890 F.2d 1215, 1228 (D.C. Cir. 1989). In this case, defendant was convicted of knowingly and repeatedly violating the securities laws. He remains capable

of violating the securities laws, and his convictions for making false statements and perjury cast serious doubt on his trustworthiness in the future.

A federal court may bar a person from future service as an officer or director of a public corporation if that person has violated section 10(b) of the Exchange Act and committed acts that demonstrate "substantial unfitness to serve as an officer or director." 15 U.S.C. § 78u(d)(2). The Senate Banking Committee's report on this provision stated that a permanent bar "is especially appropriate in cases in which a defendant has engaged in fraudulent conduct while serving in a corporate or other fiduciary capacity." S. Rep. No. 337, 101st Cong., 2d Sess. 22 (1990). Defendant's knowingly false filings of material documents with the Commission and other fraudulent acts found by Judge Cedarbaum, such as his fraudulent preparation of corporate board meeting minutes, see 783 F. Supp. at 144-45, plainly violated section 10(b). Barring defendant from serving as an officer or director, like enjoining him from serving as an officer or director, like enjoining him from future violations of the securities laws, is an appropriate sanction in light of the conduct proved against him and the risk of its repetition.

Finally, in the circumstances here, disgorgement of illegal profits is an appropriate equitable remedy "to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." First City Financial, 890 F.2d at 1230. While a court's equitable power extends only to property causally related to the wrongdoing, id. at 1231, here the uncontroverted evidence establishes that defendant realized $55,869.75 from stock sales that Judge Cedarbaum found to have been tainted with fraud. Accordingly, disgorgement of this amount is appropriate. Plaintiff further seeks an award of prejudgment interest earned to date. Prejudgment interest on the

determinable amount of illegal profits (i.e., $55,869.75) is an appropriate element of disgorgement. See, e.g., SEC v. Tome, 833 F.2d 1086, 1087 (2d Cir. 1987).

III.

Defendant's counterclaim charges plaintiff with fraud, obstructing justice, and various other alleged acts of misconduct in the course of its criminal case against defendant. The counterclaim seeks injunctive relief, money damages, and other penalties. Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(g), bars any counterclaim in this proceeding. That statute prohibits any other action from being "consolidated or coordinated" with any "action for equitable relief instituted by the Commission," even if the claims "involve common issues of fact." Id. This provision bars defendant's counterclaim. See, e.g., SEC v. Profit Enterprises, Inc., No. 90-2020 (D.D.C. December 8, 1992). Plaintiff's motion to dismiss the counterclaim must be granted.

Defendant's request for a discovery conference is without merit and, in any event, is moot. Defendant has not identified any particular discovery disputes or moved to compel any discovery. He has asserted that plaintiff's claims of privilege with regard to certain documents are improper, but he has failed to demonstrate that any of plaintiff's claims of privilege is defective. Plaintiff, for its part, has provided cogent and credible explanations for all of its claims of privilege. Defendant has also expressed a desire to depose various Commission officials, but he failed to notice any such depositions within the period set for discovery.

Date: December 15, 1993 Louis F. Oberdorfer/Signature
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,	)
Plaintiff,	)
v.	) Civil Action No. 92-2860-LFO
BENJAMIN G. SPRECHER,	)
Defendant.	)

FILED
DEC 16 1993
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA/STAMP

ORDER

For the reasons stated in the accompanying Memorandum, it is this 15th day of December, 1993, hereby

ORDERED: that plaintiff's motion for summary judgment should be, and are hereby, GRANTED; and it is further

ORDERED: that plaintiff's motion to dismiss defendant's counterclaim should be, and is hereby, GRANTED, and that the counterclaim is DISMISSED; and it is further

ORDERED: that defendant's motion to dismiss or in the alternative for summary judgment to dismiss the complaint should be, and is hereby, DENIED; and it is further

ORDERED: that defendant's motion for summary judgment on his counterclaim should be, and is hereby, DENIED; and that it is further

ORDERED: that defendant's request for a discovery conference should be, and is hereby, DENIED; and it is further

ORDERED: that defendant should be, and is hereby, permanently ENJOINED pursuant to 15 U.S.C. §§ 78u(d) and (e) from violating any federal statute that regulates securities; and it is further

ORDERED: that defendant should be, and is hereby, permanently ENJOINED pursuant to 15 U.S.C. § 78u(d)(2) from serving as an officer or director of any corporation whose securities are publicly traded; and it is further

ORDERED: that judgment should be, and is hereby entered against defendant for disgorgement of illegal profits in the amount of $55,869.75 and for prejudgment interest earned on those profits to date; and it is further

ORDERED: that, on or before January 7, 1994, plaintiff shall serve and file a calculation of prejudgment interest due and owing as of the date of this Order; and it is further

ORDERED: that on or before February 7, 1994, defendant may file an opposition to plaintiff's calculation.

Louis J. Oberdorfer/Signature
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
v.	)	Civil Action No. 92-2860 (LFO)
BENJAMIN G. SPRECHER,	)	
Defendant.	)	

FILED
FEB 1 1994
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA/STAMP

ORDER

Upon consideration of the Motion of Plaintiff Securities and Exchange Commission for Correction of Form of Order, and any opposition of the defendant thereto, it is hereby

ORDERED that the Motion for Correction of Form of Order is granted; and it is further

ORDERED that the Court's order entered December 16, 1993 is revised to omit the paragraph stating "ORDERED: that defendant should be, and is hereby, permanently ENJOINED pursuant to 15 U.S.C. §§ 78u(d) and (e) from violating any

federal statute that regulates securities; and it is further," and to include in its place the following language:

"ORDERED: that defendant, his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, should be, and are hereby, permanently ENJOINED pursuant to 15 U.S.C. §§78u(d) and (e):

I.) from violating Section 5(a) and (c) of the Securities Act of 1933 [15 U.S.C. §7e(a) & (c)] by, directly or indirectly, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to:

(A) sell securities through the use or medium of any prospectus or otherwise, absent the availability of an exemption from registration, unless a registration statement is in effect as to such securities; and

(B) offer to sell or offer to buy through the use or medium of any prospectus or otherwise any securities, absent the availability of an exemption from registration, unless a registration statement has been filed as to such securities, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. §77h].

II.) from violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. §77q(a)] by, directly or indirectly, in the offer or sale of

any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

(A) employing any device, scheme or artifice to defraud;

(B) obtaining money or property by means of any untrue statement of any material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(C) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.) from violating Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder by, directly or indirectly, in connection with the purchase or sale of the securities of any issuer, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

(A) employing any device, scheme or artifice to defraud;

(B) making any untrue statement of any material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(C) engaging in acts, practices, or courses of business which operate or would operate as a fraud or a deceit upon any person.

VI.) from violating Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 13a-11, 13a-13, and 12b-20 [17 C.F.R. §§240.13a-11, 240.13a-13, and 240.12b-20] promulgated thereunder by directly or indirectly, or by aiding and abetting the filing or causing to be filed with the Commission any periodic or current report, on behalf of any issuer, required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and the rules and regulations promulgated thereunder, which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or which fails to contain information required to be contained therein, or which fails to comply in any material respect with the requirements of such section and the rules and regulations promulgated thereunder, and

V.) from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange of 1934 [15 U.S.C. §78l] or that is required to file reports pursuant to section 15(d) of the Exchange Act [15 U.S.C. §78o(d)], and it is further:"

Louis F. Oberdorfer/Signature
UNITED STATES DISTRICT JUDGE

Dated: January 31, 1994